

REMARKS

After entry of this amendment, claims 25 and 27-53 will be pending for the Examiner's review and consideration. The Office Action dated December 8, 2003 has been carefully considered. Claims 25, 27, 28, and 33 have been amended without prejudice. Claim 26 has been canceled without prejudice. Claims 40-53 have been added. No new matter has been added. Reconsideration and allowance of the present application in view of the above amendments and the following remarks is respectfully requested.

In the Office Action dated December 8, 2003, the Examiner:

- rejected claims 25-39 under 35 U.S.C. § 102(e) as being anticipated by United States Patent No. 6,200,347 to Anderson *et al.* ("Anderson").

Independent Claim 25

Independent claim 25 was rejected under 35 U.S.C. § 102(e) as being anticipated by Anderson. Independent claim 25 has been amended to recite an implant comprising a body with first and second ends and a plurality of through-holes extending between the ends; a first and second cortical end cap disposed on each end of the body, the end caps comprising a plurality of receiving regions having a bearing surface at an end therein; and a plurality of cortical struts; wherein each cortical strut is disposed in one of the through holes of the body and mates in one of the receiving regions of each cap so that at least a portion of the struts bear against at least a portion of the bearing surface. There is no disclosure, teaching, or suggestion in Anderson of an implant comprising a first and second cortical end cap each comprising a plurality of receiving regions having a bearing surface at an end therein for mating with a conical strut so that at least a portion of the struts bear against at least a portion of the bearing surface.

Rather, Anderson discloses forming a composite bone graft from a first cortical plank 70, a cancellous plank 73, and a second cortical plank 70. The planks are assembled side by side so that holes 5 are drilled completely through the composite bone graft and pins 7 are inserted therethrough to couple the planks in their side by side relationship. Thus, Anderson does not disclose, teach, or suggest an implant comprising a first and second cortical end cap each comprising a plurality of receiving regions having a bearing surface at an end therein for mating with a conical strut so that at least a portion of the struts bear against at least a portion of the bearing surface.

Therefore, it is respectfully submitted that Anderson does not disclose, teach, or suggest all of the elements of independent claim 25. Thus, it is respectfully submitted that independent claim 25 is allowable over the cited prior art. Withdrawal of this rejection and allowance of independent claim 25 is respectfully requested.

Claims 27-40 all ultimately depend from independent claim 25, and thus, it is respectfully submitted that these claims are equally allowable. Withdrawal of these rejections and allowance of claims 27-40 is therefore respectfully requested.

Independent Claim 41

Newly added independent claim 41 recites an implant sized and configured for placement between adjacent vertebral bodies, the implant comprising a first cortical end cap having a top surface for engaging a vertebral body, a bottom surface and a receiving region disposed therebetween; a second cortical end cap having a top surface for engaging a vertebral body, a bottom surface, and a receiving region disposed therebetween; a cancellous body having a first end for engaging the bottom surface of the first cortical end cap, a second end for engaging the bottom surface of the second cortical end cap, and at least one through-hole extending therebetween; at least one cortical strut disposed in the at least one through-hole formed in the body and in the at least one receiving region formed in the first and second end caps; wherein the end caps are sized and dimensioned to serve as load-distributing members and the at least one cortical strut is sized and configured to serve as a load-bearing member. There is no disclosure, teaching, or suggestion in Anderson of providing, *inter alia*, at least one cortical strut disposed in a cancellous body wherein the at least one cortical strut is sized and configured to serve as a load-bearing member.

Rather, Anderson discloses forming a composite bone graft formed from a first cortical plank 70, a cancellous plank 73, and a second cortical plank 70. The planks are assembled side by side so that holes 5 are drilled completely through the composite bone graft laterally through the implant to receive pins 7 that hold the cortical and cancellous pieces together. Each and every embodiment of the Anderson patent which discloses a composite bone graft formed from a cancellous plank disposed between cortical planks (see, for example, FIGs. 1, 2, 6-10, 11b, 12, 13a, 27, 28, 30, 31) is designed so that at least a portion of the cancellous plank and at least a portion of the cortical planks directly engage the patient's bone. Thus, both the cancellous and the cortical planks of the Anderson patent contact adjacent vertebral bodies. In these embodiments with a cancellous plank, the holes

are drilled parallel to the bone-engaging surfaces of the composite bone graft. Since the cortical struts run parallel to the bone engaging surfaces, they are not designed to serve as load-bearing members. There is no disclosure, suggestion, or teaching in Anderson of using cortical struts disposed in a cancellous body to serve as load-bearing members as required by independent claim 41. Thus, Anderson does not disclose, teach, or suggest an implant comprising all of the limitations of newly added claim 41.

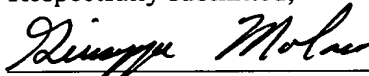
Therefore, it is respectfully submitted that Anderson does not disclose, teach, or suggest all of the elements of newly added independent claim 41. Thus, it is respectfully submitted that independent claim 41 is allowable over the cited prior art. Allowance of independent claim 41 is respectfully requested.

Newly added claims 42-53 all ultimately depend from independent claim 41, and thus, it is respectfully submitted that these claims are equally allowable. Allowance of claims 42-53 is therefore respectfully requested.

In light of the above amendments and remarks, it is respectfully submitted that claims 25 and 27-53 are now in condition for allowance, and the Examiner is respectfully requested to reconsider this application with a view towards allowance. The Examiner is invited to call the undersigned attorney at 212-790-6348, if a telephone call could help resolve any remaining issues.

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Respectfully submitted,



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